IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 2256 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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KARIMBHAI HAJIBHAI - Applicant(s)
Versus
THE DIST. COLLECTOR, & 1 - Respondent(s)

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Appearance :
MR RR TRIVEDI for Applicant(s) : 1,MR BHAVESH P TRIVEDI for Applicant(s) : 1,
None for Respondent(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 23/08/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioner –

original appellant has prayed for an appropriate Writ, direction or order quashing and setting aside the order dated 29.12.2001 passed by the District Collector, Junagadh in Food Efno. Case No. 25 of 2001, confirmed by the learned Sessions Judge in Criminal Appeal No. 7 of 2002 *vide* judgment and order dated 30.09.2005.

2. Facts leading to the present petition in nutshell are as under:

On 26.08.2001, the Chief Supply Inspector along with other Officers seized the Truck bearing No. GRN 3455 on the Veraval – Kodinar main road. During the inspection of above truck 249 bags of Groundnut seeds weighing 9213 Kgs. valued at Rs.1,47,408/- was seized on the ground that they are being illegally carried. Notice dated 18.09.2001 was issued by the District Collector, Junagadh upon the petitioner to show cause why groundnut seeds seized should not be confiscated. The petitioner submitted reply

dated 25.09.2001 submitting that he is unregistered commission agent and the groundnut seeds carried in the truck were not of his ownership and the same were ownership of his agricultural friend Shri Laxman Kanbhai Barad and it is his agriculture produce. That after giving fullest opportunity to all the concerned, recording submissions of various persons, the District Collector, Junagadh dated 29.12.2001 passed order to confiscate 75% of the goods seized. Being aggrieved and dissatisfied with the order dated 29.12.2001 passed by the District Collector, Junagadh in confiscating 75% of the goods seized, the petitioner preferred appeal before the Sessions Judge, Junagadh being Criminal Appeal No. 7 of 2002. The learned Sessions Judge, Junagadh *vide* his order dated 02.02.2002 partly allowed the appeal preferred by the applicant and reduced the confiscation from 75% to 20%. Being aggrieved and dissatisfied with the order dated 02.02.2002 passed by the learned Sessions Judge, Junagadh in Criminal

Appeal No. 7 of 2002, the State preferred Special Criminal Application No. 675 of 2002 before this Court and the learned Single Judge of this Court partly allowed the said Special Criminal Application and quashed the order dated 02.02.2002 passed by the learned Sessions Judge, Junagadh in Criminal Appeal No. 7 of 2002 and remanded the matter to the Appellate Court for considering the same afresh. That thereafter, the learned Sessions Judge, Junagadh passed fresh impugned order and by order dated 30.09.2005 dismissed the said Criminal Appeal No. 7 of 2002 and confirmed the order passed by the District Collector, Junagadh confiscating 75% of the goods seized. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present petition under Article 227 of the Constitution of India.

3. Learned Advocate appearing on behalf of the petitioner has vehemently submitted that Appellate Court as well as the Collector have

materially erred in not considering the fact that groundnut seeds in question were not of the ownership of the petitioner and was of the ownership of his agricultural friend Shri Laxman Kanbhai Barat. It is further submitted that both the Courts have materially erred in not considering the affidavit of Laxmanbhai as well as driver Habibbhai disclosing the fact regarding Laxmanbhai as ownership of groundnut seeds. It is submitted that considering the facts and circumstances of the case, both the Courts ought to have taken liberal view and ought to have ordered lessor quantity of confiscation. Therefore, it is requested to allow the present petition.

4. While opposing the present petition, Mr.K.T.Dave, learned Additional Public Prosecutor appearing on behalf of the State has submitted that the Collector, Junagadh has passed the order after giving fullest opportunity to the petitioner and after considering the statements

recorded during the course of the inquiry, order of confiscation of 75% of the goods has been passed and has also passed detailed speaking order which is confirmed by the Appellate Court; that the learned Sessions Judge, Junagadh has also passed a detailed speaking order dismissing the Criminal Appeal. Therefore, the same is not required to be interfered with in exercise of powers under Article 227 of the Constitution of India. It is submitted that the Collector, Junagadh as well as the learned Sessions Judge, Junagadh have in detail after considering the statement of Laxmanbhai and others, have found that the petitioner has created concocted story by submitting that groundnut seeds were of the ownership of Laxmanbhai which is not proved. Thereafter, considering the same impugned orders are passed, therefore, it is requested to dismiss the present petition.

5. At the outset, it is required to be noted that this petition is filed under Article 227 of

the Constitution of India and unless it is shown that there is jurisdictional error and/or by impugned orders manifest injustice has been done, impugned orders are not required to be interfered with. Considering the order passed by the Collector, Junagadh as well as the learned Sessions Judge, Junagadh, both the Courts below have passed a detailed speaking order. The Collector, Junagadh has passed the order after recording and considering the statements of various persons; that also considering the statement of Laxmanbhai and on appreciation of same it is found that the petitioner has created concocted story that the ownership of the goods seized were of Laxmanbhai. Considering above and when it is found that the petitioner has created concocted story and has not come out with true facts and unaccounted quantity of ground nut seeds so seized, confiscation order is passed, it cannot be said that the Collector, Junagadh has committed any error. Similarly, on considering the impugned order passed by the learned Sessions

Judge, Junagadh in dismissing the Appeal confirming the order passed by the Collector, Junagadh in confiscating 75% of the goods, it cannot be said that illegality has been committed by the learned Sessions Judge. On appreciation of evidence and after considering all the statements and relevant records, both the Courts below confiscated 75% of the goods which is not required to be interfered with in exercise of powers under Article 227 of the Constitution of India. There is no jurisdictional error much less than law committed by both the Courts below which requires interference of this Court in exercise of powers under Article 227 of the Constitution of India. Even otherwise it is required to be noted that the impugned order has been passed by the learned Session Judge, Junagadh in 2005 and the present petition is filed in 2007 after a period of two years and there is no explanation for delay in preferring the present petition after a period of two years.

6. For the reasons stated above, there is no substance in the present petition, requires to be dismissed and accordingly it is dismissed.

[M.R.Shah, J.]

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